

U.S.C. § 271(d)(3)(C). Southwestern Bell's provision of interLATA services in Texas easily meets this requirement as well.¹⁷

This Commission repeatedly has found that "competition [in long distance markets] will increase further if and when regional Bell Operating Companies are permitted to enter these markets."¹⁸ Even traditional opponents of BOC interLATA relief, such as MCI WorldCom's President and Chief Executive Officer and Sprint's Chairman and Chief Executive Officer, acknowledge the competitive benefits of BOC entry into interLATA services.¹⁹

The damage done by continuing to exclude Bell companies from in-region, interLATA services is staggering. As the attached affidavits of Alfred Kahn and Timothy Tardiff (App. A, Part A-6, Tab 3), Richard Schmalensee and Paul Brandon (App. A, Part A-6, Tab 6), and

¹⁷ The Commission may not use the public interest inquiry to add local competition criteria beyond those that Congress articulated in the checklist. 47 U.S.C. § 271(d)(4). The Commission may, however, evaluate such matters as the current state of long distance competition and the degree to which the checklist, section 272, and other regulatory safeguards constrain anticompetitive conduct in the interLATA market. It also may consider individual circumstances that Congress could not have anticipated – such as the applicant's history of compliance or non-compliance with Commission rules. See Michigan Order, 12 FCC Rcd at 20749-50, ¶ 397.

¹⁸ Memorandum Opinion and Order, Application of 360° Communications Co., Transferor, and ALLTEL Corp., Transferee, for Consent to Transfer Control of 360° Communications Company and Affiliates, 14 FCC Rcd 2005, 2017, ¶ 26 (1998); see also Michigan Order, 12 FCC Rcd at 20741-42, ¶ 381 ("BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets."); New York Order ¶ 428 ("the record confirms our view that BOC entry will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist").

¹⁹ Testifying before Congress, Mr. Ebberts recently asserted that BOC entry into interLATA services will help ensure that long distance prices are kept in check despite the proposed merger of MCI WorldCom and Sprint. See MCI WorldCom/Sprint Merger: Hearing Before the Senate Comm. on Judiciary, 105th Cong., 1st Session 15 (Nov. 4, 1999) ("the increased capacity and the new players that are coming on board . . . will continue to drive down long distance rates"). See also id. at 16 (Sprint CEO William T. Esrey) ("pricing competition in New York will immediately spread around the country . . .").

Kenneth Gordon (App. A, Part A-6, Tab 1) demonstrate, residential callers in Texas are being denied a real alternative to the major interexchange carriers' high basic rates. Texans also are being denied tens of thousands of additional jobs. Raimondi Aff. ¶ 15 (estimating benefits of Southwestern Bell's interLATA entry over 10 years) (App. A, Part A-6, Tab 5); Hockenyos & O'Connor Aff. ¶ 6 (same) (App. A, Part A-6, Tab 2). MIT economist Richard Schmalensee estimates that if Southwestern Bell offered in Texas the low, "no-strings-attached" basic rates that it has sought permission to offer in Oklahoma, residential customers in Texas would benefit from additional competition across the interLATA market by about \$38 each per year – whether or not they take their interLATA service from Southwestern Bell. Schmalensee & Brandon Aff. ¶ 68. The total consumer benefit in Texas would be \$185 million per year. *Id.* There is no legitimate justification for further delaying such potential benefits. To the contrary, with MCI WorldCom and Sprint now proposing to transform the Big Three into a Big Two, the need for new interLATA competition from Southwestern Bell has become even more imperative.

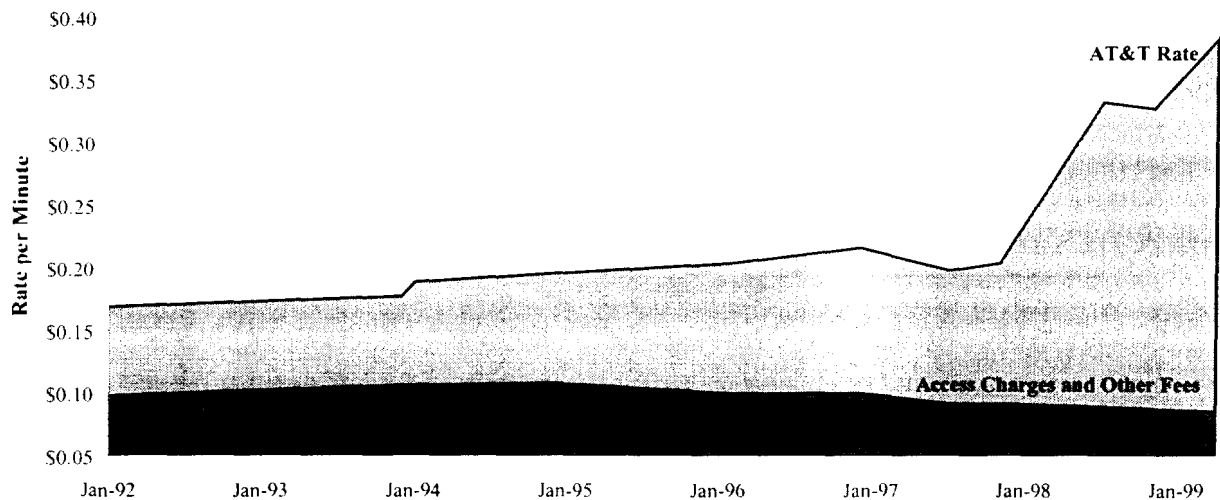
A. The Current Long Distance Oligopoly Limits Competition

In the Michigan Order, the Commission repeated its "concern[s] . . . that not all segments of this market appear to be subject to vigorous competition," and "about the relative lack of competition among carriers to serve low volume long distance customers." 12 FCC Rcd at 20552-53, ¶ 16. Residential callers are paying higher and higher prices, even though the major carriers' costs are falling.²⁰ Low volume customers have been particularly hard hit, as the major carriers have moved in lock-step to impose minimum usage requirements and other fixed fees.

²⁰ See Kahn & Tardiff Aff. ¶¶ 12-20; Schmalensee & Brandon Aff. ¶¶ 13-14; Affidavit of Paul W. MacAvoy on Behalf of Bell Atlantic ¶¶ 84-92, Application of Bell Atlantic – New York for

MacAvoy Aff. ¶ 112. Analysts calculate that between 1991 and 1999, AT&T has raised its interstate, residential direct-dial basic rates by up to 128 percent while interstate access charges fell by as much as 30 percent.²¹ As depicted below in Figure 2, AT&T more than tripled its basic rates between 1991 and 1998, net of access charges and other fees. *Id.* Today, only 1 percent of AT&T's residential customers obtain rates as favorable as what AT&T would have charged had it merely passed on its savings from reduced access charges. Taylor Aff. ¶ 28.

**FIGURE 2: AT&T AVERAGE INTERSTATE BASIC RESIDENTIAL RATE
VS. ACCESS CHARGES AND OTHER FEES**



Source: *Schmalensee & Brandon Aff.* ¶ 12 & Fig. 2.

Few observers are better positioned to discuss today's interLATA market than Joseph Nacchio, formerly Executive Vice President of AT&T's Consumer and Small Business Division

Authorization to Provide In-Region, InterLATA Services in New York Under Section 271 of the Communications Act, CC Docket No. 99-295 (FCC filed Sept. 29, 1999) ("MacAvoy Aff.").

²¹ See *Schmalensee & Brandon Aff.* ¶ 13; see also Affidavit of William E. Taylor on Behalf of Bell Atlantic ¶¶ 10, 19, Application of Bell Atlantic – New York for Authorization to Provide In-Region, InterLATA Services in New York Under Section 271 of the Communications Act, CC Docket No. 99-295 (FCC filed Sept. 29, 1999) ("Taylor Aff.").

and currently President of Qwest. In a speech to industry analysts during March 1998, Mr. Nacchio confessed that, “as former architect” of AT&T’s pricing policies, “I know [the long distance industry is] oligopolistic.” Nacchio Questions “Flow-Through” of Access Charge Reductions, TR Daily, Mar. 13, 1998. “Nobody really flows through access charge reductions,” Mr. Nacchio explained, and pricing has “no relation to cost.” Id.

The Big Three long distance carriers emphasize that they offer discount plans with rates well below their basic schedules. But most residential customers do not, or cannot, use these plans. As of January 1999, 42 percent of AT&T’s residential customers in Texas paid basic rates, or even more than the basic rates because they signed up for an inappropriate calling plan. Id. ¶ 27. Another 13 percent of AT&T’s Texas residential customers had no toll usage, and were subject to AT&T’s ever-rising monthly fees (now totaling \$5.89 per month)²² even though they made no calls. Kahn & Tardiff Aff. ¶ 25. Thus, 55 percent of AT&T’s Texas residential customers derived no benefit at all from the hypothetically available calling plans. Nor has the recent “price war” among the Big Three involving flat-rate calling plans changed this situation. To the contrary, “the majority of small- to medium-intensity users will realize effective price increases.” MacAvoy Aff. ¶ 113.²³ As Dean Schmalensee and Dr. Brandon explain, “[t]he

²² AT&T Rate Information (visited Jan. 6, 2000) <http://www.att.com/rate_info/updates.html> (listing monthly minimum fee of \$3.00, Universal Connectivity Charge of \$1.38, and Carrier Line Charge of \$1.51).

²³ See also Rebecca Blumenstein, MCI’s Revenue, Operating Profit Surges: Telecoms Giant Weathers Industry Price-Cutting, Sparking Sighs of Relief, Wall St. J., Oct. 29, 1999, at A3 (“How did the telecom companies maintain their profit margins? The secret is that many consumers are paying monthly fees of about \$4.95 in return for the lowest rates. AT&T officials . . . said revenue per minute has actually increased in part because of these monthly fees. Also, people are talking more because they think their long-distance costs are lower. One other significant but little noticed factor is that the long-distance companies are now paying less to the regional Bell operating companies to originate and terminate calls.”).

combination of rising basic rates and optional calling plans, which the interexchange carriers change over time, effectively exploits many customers' lack of information and inertia. With their pricing, the interexchange carriers segment the market and separate the active 'bargain-hunters' from the 'victims.'" Schmalensee & Brandon Aff. ¶ 26.

B. Southwestern Bell's Entry into the InterLATA Market in Texas Will Intensify Competition and Benefit Consumers

Southwestern Bell's entry into the interLATA services market in Texas will provide missing competition and benefit long distance consumers through lower prices and/or higher quality service. Moreover, by chipping away at costly barriers between local and long distance services, Southwestern Bell's entry will bring further benefits.

I. Evidence of Competition Where LECs Have Been Allowed To Offer Long Distance

Uniform historical experience confirms the likely benefits of in-region, interLATA entry by Southwestern Bell. See Part III.D.2, infra. One of the best examples of this healthy competition is found in Connecticut. Since SNET entered the interstate market in 1994, Connecticut residents have benefited from price competition between SNET and the incumbent interexchange carriers. SNET has competed effectively by offering basic rates 11 percent below AT&T's and average rates 23 percent below AT&T's – a scenario that augers well for consumers when Southwestern Bell enters the interLATA market in Texas. Schmalensee & Brandon Aff. ¶¶ 64, 67 & Attachs. C & D; Kahn & Tardiff Aff. ¶ 82. SNET's entry has especially benefited low-volume callers who had disproportionately stayed with AT&T because they were ignored by other carriers. See Schmalensee & Brandon Aff. ¶¶ 65-67; Murray Aff. ¶ 19 (App. A, Part A-6, Tab 4). SNET has shown both the willingness and the ability to compete for this low-volume segment of the residential market, attracting a much higher share of

interstate customers than interstate revenues.²⁴ Consumers of intrastate services in Connecticut also have benefited from SNET's interstate entry, as AT&T responded to SNET's long distance offerings with a new 5-cent per minute rate for its interstate subscribers.²⁵ Schmalensee & Brandon Aff. ¶ 64. SNET answered this promotion immediately, introducing a per-second billing scheme that provided the average residential customer a 14.9 percent savings from AT&T's discounted intrastate rates. Murray Aff. ¶ 15.

2. *Southwestern Bell Is Suited To Break Up the Interexchange Oligopoly in Texas*

Southwestern Bell will offer consumers these same sorts of competitive benefits when it provides in-region, interLATA service in Texas. Southwestern Bell has already indicated that it will seek to differentiate itself from the Big Three, for instance by refraining from assessing minimum monthly charges for long distance service. SBC/Ameritech Merger Order ¶ 400. This commitment, the Commission has explained, provides "a direct benefit to consumers, particularly low-income consumers and low-volume long distance callers." Id.

Southwestern Bell has a strong brand name that immediately will make it a real competitor to the three major incumbents.²⁶ Indeed, many industry analysts believe that the

²⁴ See Murray Aff. ¶ 19 (SNET's share of interstate toll revenues was 15 percent and its share of subscriber lines was 50 percent in third quarter 1998).

²⁵ In AT&T's words, this rate reduction "prove[d] the benefit competition brings to the marketplace." AT&T Press Release, AT&T Offers New Low Price for Calling in Connecticut, May 16, 1996. Soon thereafter, MCI and Sprint began offering similar promotions.

²⁶ See Michigan Order, 12 FCC Rcd at 20551-52, ¶ 15; Schmalensee & Brandon Aff. ¶¶ 44-48; see also Memorandum Opinion and Order, In re Craig O. McCaw, 9 FCC Rcd 5836, 5871-72, ¶ 57 (1994) (AT&T's acquisition of McCaw would serve the public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

major interexchange carriers' recent price reductions for higher-volume callers are a response to imminent Bell company entry.²⁷

Likewise, Southwestern Bell will be able to compete with CLECs and the major interexchange carriers by offering bundled services and "one stop shopping." Southwestern Bell will have no unfair advantage in providing bundled packages. SWBT's satisfaction of the competitive checklist (described in Parts II and V of this Brief) shows that the local market is fully open. Moreover, SWBT implemented intraLATA toll dialing parity as of May 7, 1999, in accordance with the requirements of this Commission and the Texas PUC. See Deere Aff. ¶ 149; Order, Application of Southwestern Bell Telephone Company for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Subst. R. 23.103, PUC Docket No. 17000 (Tex. PUC Mar. 31, 1999).²⁸ As the local and intraLATA toll markets are fully open, all telecommunications carriers in Texas – except Southwestern Bell – today have an equal opportunity to provide bundles that include all types of services, including local, intraLATA toll, and interLATA toll. See Gordon Aff. ¶ 31; Habeeb Aff. ¶¶ 49, 113.

²⁷ See Interview with Michael Mahoney, Head of Telecom Investing at Dresdner RCM, by Lauren Thierry, Market Coverage, "Telecom Sector Analysis" (CNN Financial television broadcast, Aug. 9, 1999); Shawn Young, AT&T Enters the Fray with New Rates; CEO Says Co. Undervalued, Dow Jones Newswires, Aug. 30, 1999; BOCs' Long Distance Desires Aren't Dampened by Price War, Telecommunications Reports, Sept. 6, 1999, at 5 (quoting AT&T CEO Michael Armstrong as saying that, "as you get down to 7 cents a minute and 5 cents a minute, you certainly have less room for our RBOC . . . friends to come in and compete on price."). See also Taylor Aff. ¶ 29.

²⁸ As part of its further effort to ensure open local markets in Texas, the Texas PUC imposed "winback" restrictions on SWBT. See Wilkinson Aff. (Mar. 2, 1998) (App. C, Tab 169). SWBT has complied with these requirements.

3. *Additional Public Benefits*

Approval of Southwestern Bell's application will lead to a faster expansion of the Texas economy through the benefits of lower long distance prices and enhanced information technology productivity. See Raimondi Aff. ¶¶ 15-17. One study predicts that this expansion will create more than 61,000 new jobs for Texas residents over the next ten years, and boost the gross state product by \$7.6 billion over the same period. Id. Attach. A (WEFA Report) Figs. 5 & 6. These estimates are conservative. Id. ¶ 17. Indeed, other estimates of the benefits of Southwestern Bell's entry are substantially higher. See Hockenyos & O'Connor Aff. ¶ 6 (estimating increase of 63,000 to 135,000 Texas jobs and growth of \$5.6 to \$12 billion in Gross State Product by 2010); MacAvoy Aff. at 83-88 (estimating nationwide consumer gain of \$13.5 billion to \$66.3 billion from entry of a regional Bell company into in-region, interLATA services).

C. **Southwestern Bell's Entry into the InterLATA Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition**

On the other side of the coin, Southwestern Bell has no ability to impede competition by entering the interLATA market in Texas. The 1996 Act and regulatory reforms have overtaken 20-year-old worries about cross-subsidy and network discrimination.

1. *Regulation and Practical Constraints Make "Leveraging" Strategies Impossible To Accomplish*

Cost Misallocation. Theories that a Bell Company might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, are premised upon the assumption that the company "is regulated under rate-of-return

regulation.”²⁹ Yet, the Commission has overhauled its approach to rate regulation, adopting a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs “a powerful profit incentive” to cut the costs of their regulated services. National Rural Telecom Ass’n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no “reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices.” Id.³⁰ Accordingly, price cap regulation provides strong “efficiency incentives” to keep down costs allocated to regulated services, and effectively eliminates any opportunity to recoup losses through attempted cost shifting.³¹

²⁹ Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) (“Non-Accounting Safeguards NPRM”). DOJ contended in supporting approval of the MFJ that the Bell System’s alleged practice of subsidizing its competitive offerings at ratepayers’ expense “stem[med] . . . directly from AT&T’s status as a rate of return regulated firm.” Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. filed Feb. 10, 1982).

³⁰ See Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136 (Commission’s price cap policies “reduce[] the potential that the BOCs would improperly allocate the costs of their affiliates’ interLATA services”).

³¹ Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17605-06, ¶145 (1996) (“Accounting Safeguards Order”); see Kahn & Tardiff Aff. ¶ 63; Gordon Aff. ¶ 35; Taylor Aff. ¶ 72 (“price cap regulation fundamentally breaks the link between accounting costs and prices”); Illinois Pub. Telecomms. Ass’n v. FCC, 117 F.3d 555, 570 (D.C. Cir.) (under price caps “risk of losses” is borne by “investors rather than ratepayers”), clarified on reh’g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied, 118 S. Ct. 1361 (1998). To the extent that improper cost-sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission’s decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform, 12 FCC Rcd 16642, 16699-703, ¶¶ 147-155 (1997).

In Section 272 of the Act, Congress further reduced opportunities for cost-shifting by requiring that BOCs provide long distance service through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company.

At the state level, legislators and regulators have an “overwhelming concern for keeping the rates for local residential service low,” and consequently have a powerful reason to prevent cost-shifting from unregulated activities to regulated telephone services. United States v. Western Elec. Co., 993 F.2d 1572, 1581 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). SWBT is subject to price cap regulation in Texas, as it is at the federal level. See Kahn & Tardiff Aff.

¶ 63. The Texas PUC also has adopted the Commission’s Uniform System of Accounts and cost allocation requirements. 16 Tex. Admin. Code § 23.12(a), (e).

Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, Southwestern Bell would not and could not raise the cost of its access services in an effort to effectuate a “price squeeze” on other interexchange carriers.³² The Commission has cited a host of factors that “constrain the ability of a BOC or its interLATA affiliate to engage in a predatory price squeeze,” and concluded that BOCs “will not be able to engage in a price squeeze to such an extent that the BOC interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output.” See BOC Non-Dominance Order, 12 FCC Rcd at 15832, ¶ 129; see also Access Reform Order,³³ 12 FCC Rcd at 16101, ¶ 278 (“we have in place adequate safeguards against such conduct”). The Commission has found that interexchange

³² See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

³³ First Report and Order, Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, 12 FCC Rcd 15982 (1997).

carriers' ability to acquire retail services at wholesale rates and to buy unbundled network elements is itself sufficient to enable those competitors "to defeat" an attempted price squeeze.³⁴ The Commission likewise has concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing.³⁵

Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that BOCs might discriminate in the pricing of their exchange access services. Congress specifically provided that a BOC must charge its affiliate, or impute to itself, "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." 47 U.S.C. § 272(e)(3). The Commission thus has concluded that "the statutory and regulatory safeguards . . . will prevent a BOC from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services." BOC Non-Dominance Order, 12 FCC Rcd at 15825, ¶ 119.

Technical Discrimination. Southwestern Bell has been providing exchange access services to the long distance industry for more than a dozen years. From a technical standpoint, Southwestern Bell cannot discriminate against these carriers or CLECs who might serve them,

³⁴ Memorandum Opinion and Order, Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control, 12 FCC Rcd 2624, 2649, ¶ 54 (1997).

³⁵ BOC Non-Dominance Order, 12 FCC Rcd at 15815-16, ¶ 104, 15819, ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943-44, ¶ 137; see also Kahn & Tardiff Aff. ¶¶ 52-55.

and any such attempts would be easily discovered through routine monitoring procedures. Deere Aff. ¶¶ 231-272.

Southwestern Bell also is subject to elaborate federal and state reporting requirements, ensuring that any interested party – be it the FCC, the Texas PUC, interexchange carriers, or competitive access providers – can scrutinize Southwestern Bell’s performance and pre-empt any threat to competition.³⁶ As this Commission has put it, “the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements . . . will collectively minimize the potential for anticompetitive conduct by the Bell Company in its interexchange operations.”³⁷ Nevertheless, if they are concerned about the quality of Southwestern Bell’s access services but for some reason do not wish to use the network of a competitive access provider (“CAP”), carriers that provide local services may use unbundled pieces of SWBT’s network to provide their own access, with the additional protection of performance monitoring and performance penalties as discussed in Part II.A of this Brief. See Deere Aff. ¶ 271; Gordon Aff. ¶ 48; see also SBC/Ameritech Merger Order ¶ 432.

³⁶ This Commission, for example, has several reporting requirements addressing the quality of BOC access services. Automated Reporting and Management Information System (“ARMIS”) filing requirements include detailed information on installation and repair intervals for service provided to interexchange carriers, blockage on common trunk groups between local exchange carriers’ end offices and the access tandems, and counts of complaints by residential and business customers, among other categories of information. See 47 C.F.R. § 43.21. Open Network Architecture (“ONA”) rules impose additional access-related reporting requirements. See id. §§ 51.325-51.335.

³⁷ First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22063, ¶ 327 (1996) (“Non-Accounting Safeguards Order”), on recon., 12 FCC Rcd 2297 (1997), further recon. 12 FCC Rcd 8653 (1997), aff’d sub nom., Bell Atlantic Tel. Co. v. FCC, 131 F.3d 1044 (D.C. Cir. 1997).

Because access revenues account for approximately 31 percent of its total operating revenues,³⁸ Southwestern Bell also has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers. To the extent that it can lower the costs of interexchange carriers, these savings (if passed through to consumers) should stimulate demand for long distance services and increase Southwestern Bell's access revenues. See David S. Sibley & Dennis L. Weisman, *The Competitive Incentives of Vertically Integrated Local Exchange Carriers: An Economic and Policy Analysis*, 17 J. Policy Analysis and Management, No. 1, at 74, 76 (Winter 1998) (App. H, Tab 1). Similarly, Southwestern Bell must maintain (if not enhance) the quality of access service it provides to avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a CLEC or a CAP.

Finally, the Commission has ruled that, once a complainant makes a prima facie showing that a BOC has "ceased to meet the conditions of entry," the burden shifts to the BOC to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345. This burden-shifting is a complete answer to any claim that discrimination and cross-subsidy, even though detectable, might be hard to prove.

Misuse of Confidential Information. This Commission has required BOCs to make network disclosure information available to other interexchange carriers on the same terms and conditions as apply to the BOC's own long distance affiliate. Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. In its rulemaking implementing the customer privacy requirements of Section 222 of the Act, moreover, the Commission determined that the

³⁸ FCC, 1998 Preliminary Statistics of Communications Common Carriers Table 2.9.

safeguards established by that section appropriately address potential anticompetitive use of CPNI by a Bell company offering in-region, interLATA services.³⁹ Southwestern Bell will fully comply with the requirements of 47 U.S.C. § 222 in its use of CPNI. Rehmer Aff. ¶ 27 (App. A, Part A-7, Tab 2).

2. *Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential*

Southwestern Bell's inability to raise prices or restrict output as an interexchange carrier in Texas is confirmed by more than a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. See Kahn & Tardiff Aff. ¶ 80 ("An ounce of such actual experience . . . is surely weightier than a pound of speculation about possible misdeeds . . ."). This uniform historical experience includes:

- Bell Atlantic/NYNEX's provision of interexchange services in limited geographic corridors to and from New Jersey, see United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983); Kahn & Tardiff Aff. ¶ 81;
- GTE's ownership of Sprint, which even AT&T and MCI have conceded did not lead to domination of in-region, interLATA services⁴⁰ and which ended when GTE sold Sprint between 1986 and 1992;
- Wireless services, which Bell companies have not dominated despite their theoretical incentives to discriminate with respect to interconnection and exchange access, see Kahn & Tardiff Aff. ¶¶ 83-85; Gordon Aff. ¶¶ 19, 42; Taylor Aff. ¶ 53;

³⁹ Second Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, 13 FCC Rcd 8061, 8172-179, ¶¶ 155-169 (1998), rev'd on other grounds sub nom. U S WEST, Inc. v. FCC, 182 F.3d 1224 (10th Cir. 1999).

⁴⁰ MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Elec. Co., No. 82-0192 (D.D.C. filed Dec. 9, 1994); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree at 159, United States v. Western Elec. Co., No. 82-0192 (D.D.C. filed Dec. 7, 1994).

- IntraLATA toll services, see Kahn & Tardiff Aff. ¶¶ 89-90, Gordon Aff. ¶ 44;
- Paging, see Kahn & Tardiff Aff. ¶ 86;
- Voice messaging, see *id.* ¶ 87; and
- Customer premises equipment (“CPE”), see *id.* ¶ 88.

D. The Effect of Southwestern Bell’s Entry on Local Competition

Approving Southwestern Bell’s application also serves the public interest in full local competition. All potential entrants will have to compete even more intensely for local business in Texas once Southwestern Bell is able to offer bundled packages of local and long distance service, but this is especially true for the major interexchange carriers. The fear of losing long distance profits to Southwestern Bell once Southwestern Bell is able to be a one-stop provider “would surely give long distance carriers an added incentive to enter the local market.”⁴¹

In short, delaying section 271 relief in Texas would deny consumers added choice and competitive benefits in the interLATA market. There would be no offsetting benefits in the local market, but rather, further consumer harm.

IV. SOUTHWESTERN BELL WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

When providing the authorized interLATA services in Texas, SWBT and its long distance affiliate[s] will operate independently of each other and conduct business on an arm’s-length, non-discriminatory basis in compliance with sections 271(d)(3)(B) and 272. Indeed,

⁴¹ Memorandum Opinion and Order, Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Servs. in South Carolina 13 FCC Rcd 539, 552-53, ¶ 25 (1977) (“South Carolina Order”); see Kahn & Tardiff Aff. ¶ 76 & n.69; Taylor Aff. ¶ 39.

Southwestern Bell is already implementing structural separation and nondiscrimination safeguards that will ensure that Southwestern Bell does not have any unfair advantage over competitors when it sells in-region, interLATA services in Texas.⁴²

Separate Affiliate Requirement of Section 272(a). SBC has established SBCS as a separate affiliate to provide in-region, interLATA services in compliance with the structural separation and operational requirements of section 272. Weckel Aff. ¶¶ 6-16. SBCS is a wholly separate entity from SWBT, and neither owns stock of the other. *Id.* ¶ 8; Rehmer Aff. ¶ 6. SBC may reorganize, merge, or otherwise change the form of SBCS or create or acquire additional interexchange subsidiaries. Any such subsidiaries designated as section 272 affiliates, however, will meet all of the requirements of section 272 when providing services covered by this Application. Rehmer Aff. ¶ 4.

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate “shall operate independently from the Bell operating

⁴² On October 8, 1999, SBC merged with Ameritech, with the result that the Ameritech companies are now subsidiaries of SBC and affiliates of SWBT and SBCS. Ameritech has three section 272 affiliates that currently comply with the structural separation and nondiscrimination requirements of section 272. See generally Shutter Aff. (App. A, Part A-7, Tab 6); Earley Aff. (App. A, Part A-7, Tab 4); Muhs Aff. (App. A, Part A-7, Tab 5). As part of the post-merger integration process, however, the Ameritech BOCs and their section 272 affiliates are being brought within the Southwestern Bell compliance program described in this Application. Rehmer Aff. ¶ 59. Before the Ameritech merger, SBC owned two BOCs, Pacific Bell and Nevada Bell, in addition to SWBT. While not covered by this application, these other BOCs are operating in conformity with section 272’s requirements in the same manner as SWBT. See generally Rehmer Aff.; Weckel Aff. (App. A, Part A-7, Tab 3); Larkin Aff. (App. A, Part A-7, Tab 1).

SBC has filed a petition for forbearance regarding the provision of its non-local directory assistance services through a section 272 affiliate. See Rehmer Aff. ¶ 8. These services have already been brought into compliance with the requirements of section 271(g)(4), as recently interpreted by this Commission. *Id.*; Rogers Aff. ¶ 11. Subject to its rights of appeal, SBC will abide by the Commission’s decision on the pending petition. See New York Order ¶ 445.

company.” For as long as SBCS or any other affiliate is subject to section 272, it will operate in a manner that satisfies both this statutory requirement and the Commission’s implementing regulations. Weckel Aff. ¶¶ 17-21; Rehmer Aff. ¶¶ 9-17. SBCS and SWBT do not jointly own telecommunications transmission or switching facilities, or the land and buildings on which such facilities are located, and will not jointly own such facilities while subject to this restriction under section 272. Weckel Aff. ¶ 19. SBCS will not obtain operations, installation, or maintenance services from SWBT (or any other affiliate that is not operated in accordance with section 272) with respect to switching and transmission facilities SBCS owns or leases from a party other than SWBT, for as long as required by section 272. *Id.* ¶ 19; Rehmer Aff. ¶ 13. Likewise, SBCS will not provide operations, installation, or maintenance services with respect to SWBT’s transmission and switching facilities, other than sophisticated equipment SWBT may purchase from SBCS in accordance with Commission rules. Weckel Aff. ¶ 19; Rehmer Aff. ¶ 14.

Consistent with this Commission’s application of section 272(b)(2), SBCS maintains its books, records, and accounts in accordance with Generally Accepted Accounting Principles (“GAAP”). Weckel Aff. ¶¶ 22-30. SBCS and SWBT use different accounting codes and separate ledger systems, providing assurance that SBCS’s books, accounts, and financial records are separate from SWBT’s books and records. Larkin Aff. ¶ 9; Weckel Aff. ¶¶ 26-28. A regular audit program and other internal and external controls further ensure accounting compliance. Weckel Aff. ¶¶ 29, 71-73; Larkin Aff. ¶¶ 38-44.

SBCS has separate officers, directors, and employees from SWBT. 47 U.S.C. § 272(b)(3); Weckel Aff. ¶¶ 31-41; Rehmer Aff. ¶ 19.

Creditors of SBCS do not and will not have recourse to the assets of SWBT. In addition, SBCS does not and will not provide creditors indirect recourse to SWBT's assets through a non-section 272 affiliate of SWBT. 47 U.S.C. § 272(b)(4); Weckel Aff. ¶¶ 42-44; Rehmer Aff. ¶¶ 20-21.

All transactions between SWBT and SBCS have been reduced to writing and are available for public inspection. 47 U.S.C. § 272(b)(5); Larkin Aff. ¶¶ 15-24; Weckel Aff. ¶¶ 45-70. Such transactions have been and will continue to be carried out on an arm's-length basis in accordance with the Commission's applicable affiliate transaction and cost-accounting rules. Larkin Aff. ¶¶ 13-14, 51-53. This includes pricing services at the higher of fully distributed cost or estimated fair market value. Id. ¶ 51.

SBCS provides detailed written descriptions of all assets transferred or services provided in a transaction and posts the terms and conditions of new transactions on SBC's homepage, located at <<http://www.sbc.com>>, within 10 days. Larkin Aff. ¶ 17; Weckel Aff. ¶¶ 50-69. As indicated on the website, transactions remain posted for one year after their termination. Weckel Aff. ¶¶ 65-66, 68. Disclosures include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions. Larkin Aff. ¶¶ 17, 37; see also Weckel Aff. ¶¶ 47-60. For asset transfers, the quantity and, if relevant, the quality of the transferred assets are disclosed. Larkin Aff. ¶ 17. For transactions involving services, disclosure includes (where relevant) the number and type of personnel assigned to the project, any special equipment used to provide the service, and the length of time required to complete the transaction. Id. ¶¶ 17, 24, 27-28, 30, 37, 53; Weckel Aff. ¶ 58. For each agreement, Southwestern Bell provides information on the status of

the agreement, the states affected, and the pricing methodology used to determine prices under the agreement. Larkin Aff. ¶ 22; Weckel Aff. ¶¶ 58, 66.

Verified copies of these disclosures, including competitively sensitive billing information that is subject to confidentiality protections and is not posted on the Internet, are available for public inspection during regular business hours at SBC's San Antonio, Texas headquarters as well as in San Francisco, California, Reno, Nevada, and Washington, D.C. Larkin Aff. ¶ 15; Weckel Aff. ¶ 59. The SBC website provides contact information for reviewing these paper files. Weckel Aff. ¶ 51. These disclosure procedures have been approved by the Texas PUC and are consistent with Commission precedent as well as Congress's indication – in the text of section 272 itself – that Bell companies' proprietary information should be protected against unnecessary disclosure. Id. ¶¶ 54-56, 61; 47 U.S.C. § 272(d)(3)(C).

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits SWBT from discriminating between SBCS and other entities. Subject to the joint marketing authority granted by section 272(g), SWBT makes available to unaffiliated entities any goods, services, facilities, and information that it provides or will provide to SBCS at the same rates, terms, and conditions. Rehmer Aff. ¶¶ 22-28. These may include exchange access, interconnection, collocation, unbundled network elements, resold services, access to OSS, and administrative services. Id. ¶¶ 24-29. To the extent that SWBT develops new services for or with SBCS, it also will cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. Id. ¶¶ 29-32.⁴³

⁴³ In the Third Order on Reconsideration in the Non-Accounting Safeguards docket, this Commission declined to adopt specific reporting requirements to implement section 272(c)(1), but rather noted that states such as Texas have adopted performance monitoring programs that

SWBT does not and will not, for so long as the requirement applies, discriminate between SBCS and other entities with regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services. Id. ¶ 32. SWBT will provide telecommunications services and network elements to SBCS using the same service parameters, interfaces and procedures, intervals, standards, and practices used to service other carriers and retail customers. Id. ¶ 24. SWBT will not discriminate between SBCS and other carriers in the processing of presubscribed interexchange carrier change orders. Id. ¶ 38. Nor does SWBT discriminate between SBCS and unaffiliated carriers with regard to protection of confidential network or customer information. Id. ¶ 41. SWBT will not disclose any unaffiliated carrier's proprietary information without the unaffiliated carrier's consent. Id. ¶ 42. As part of its compliance program, SBC has adopted employee assignment policies that minimize the risk of unauthorized transfers of BOCs' non-public information. Id. ¶ 30.

Review Requirements of Section 272(d). Pursuant to section 272(d) and consistent with the Commission's rules, SWBT will obtain and pay for a biennial, independent federal/state review. Larkin Aff. ¶¶ 38-44; Weckel Aff. ¶¶ 71-73. In accordance with section 272(d)(2), the independent auditor will provide this Commission, the Texas PUC, and other involved state commissions with access to working papers and supporting materials relating to its review. Larkin Aff. ¶ 43. And, as required by section 272(d)(3), SBC and its affiliates, including SBCS and SWBT, will provide the independent auditor, the Commission, the Texas PUC, and other involved state commissions with access to financial records and accounts necessary to verify

"help ensure that BOCs meet their nondiscrimination obligations when providing competing carriers access to critical support functions." Third Order on Reconsideration, Implementation of

compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements of section 272(b). Id. ¶¶ 41-42; Weckel Aff. ¶¶ 61, 71.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), SWBT will fulfill, on a nondiscriminatory basis, all requests from unaffiliated entities for telephone exchange and exchange access services within the same intervals as these services are provided to SBCS. Rehmer Aff. ¶¶ 31-36; see Deere Aff. ¶¶ 231-234. SBCS's requests are placed and processed using the same organizations, procedures, and OSS interfaces as requests from unaffiliated carriers. Rehmer Aff. ¶¶ 32-35. This precludes discrimination. See Second Louisiana Order, 13 FCC Rcd at 20800-01, ¶ 349. Unaffiliated carriers are able to obtain information regarding service quality and the service intervals within which SWBT provides service to itself and its affiliates. Rehmer Aff. ¶¶ 32-33; see generally Dysart Aff. (performance measurements); see also Part II.A, infra.

SWBT will comply with section 272(e)(2) by providing any facilities, services, or information concerning its provision of exchange access to SBCS only if such facilities, services, or information are made available to other authorized providers of interLATA services in that market on the same terms and conditions. Rehmer Aff. ¶¶ 40-43. In accordance with section 272(e)(3), SWBT will charge SBCS rates for telephone exchange service and exchange access that are no less than the amount SWBT would charge any unaffiliated interexchange carrier for such service. Id. ¶¶ 44-45.

To the extent that SWBT provides (under regulatory authorization) interLATA or intraLATA facilities or services to SBCS, SWBT will make such services or facilities available

the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as

to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). Id. ¶¶ 46-47. SWBT will record any such transactions between SWBT and SBCS in the manner prescribed in the Commission's Accounting Safeguards Order,⁴⁴ unless other rules apply. See Larkin Aff. ¶¶ 15-24 (compliance safeguards).

Joint Marketing Provisions of Section 272(g). Pursuant to 272(g)(1), SBCS will not market or sell SWBT's telephone exchange services unless SWBT permits SBCS's competitors (including providers of competing information services, if applicable) to market SWBT's telephone exchange services as well. Weckel Aff. ¶¶ 74-82; Rehmer Aff. ¶¶ 48-50.

As Southwestern Bell will conduct any joint marketing in a manner consistent with the Commission's South Carolina Order, 13 FCC Rcd at 671-72, ¶ 239. Rehmer Aff. ¶ 50; Weckel Aff. ¶ 80. Moreover, to the extent SWBT is involved in planning, design, and development activities for SBCS that are not themselves joint marketing, SWBT will make these services available to other entities on a nondiscriminatory basis pursuant to section 272(c)(1). Rehmer Aff. ¶¶ 31-32.

Training and Internal Control Mechanisms. To ensure strict adherence to the requirements of section 272 by all employees, SWBT and SBCS have put in place extensive training programs, including live sessions, videotaped presentations, and written materials. Id. ¶¶ 51-57 (describing SBC's and SWBT's compliance and training activities) & Attach. G (training videotape); Weckel Aff. ¶ 70 & Attach. U (SBCS compliance training policy). Before SBCS begins offering interLATA services in Texas, Southwestern Bell will distribute a section

amended, CC Docket No. 96-149, FCC 99-242, ¶¶ 33-35 & n.140 (rel. Oct. 1, 1999).

⁴⁴ Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539 (1996).

272 compliance booklet to all employees of SBC, SWBT, and SBCS, and to personnel of other affiliates whose responsibilities require familiarity with section 272's requirements. Rehmer Aff. ¶ 56 & Attach. H (compliance booklet).

SWBT has a centralized Affiliate Oversight Group that is responsible for ensuring compliance with applicable state and federal accounting safeguards and has established intra-corporate reporting and review requirements to assist in accomplishing that function. Larkin Aff. ¶¶ 45-50. In addition, SBC's 272 Oversight Team meets on a regular basis to review affiliate transactions for consistency with the requirements of section 272. Rehmer Aff. ¶ 54. Prior to undertaking a transaction or other joint activity with an existing or planned section 272 affiliate, managers must contact the 272 Oversight Team for review and approval. Id. ¶ 55.

In response to issues arising out of Southwestern Bell's merger with SNET, the 272 Oversight Team developed a specific compliance plan to ensure that mergers do not affect SBC's compliance with section 272. Id. ¶ 57. This plan calls for a thorough review of the merger partner's services and structures to evaluate section 272 compliance issues. Id. The new procedures were used in connection with the recent Ameritech merger. Id. ¶ 58; see also Earley Aff.; Muhs Aff.; Shutter Aff.

V. SOUTHWESTERN BELL'S TEXAS PUC-APPROVED AGREEMENTS SATISFY ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST

Because the "competitive checklist" of section 271(c)(2)(B) incorporates substantive requirements of section 251, it allows this Commission to verify that Congress's "three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale" – are available in practice. South Carolina Order, 13 FCC Rcd at 545-46, ¶¶ 10-11. The remainder of this Brief comprehensively addresses SWBT's

compliance with the detailed, and often highly technical, requirements of the checklist and the implementing orders of this Commission and the Texas PUC.

As explained below, any CLEC can obtain from SWBT in a timely and efficient manner the facilities and services it needs to provide local service in Texas, no matter what statutorily authorized mode of entry the CLEC selects. To ensure that this is so, SWBT has incurred “a concrete and specific legal obligation to furnish [each checklist] item upon request” and has done what is necessary to supply those items “in the quantities that competitors may reasonably demand and at an acceptable level of quality.” Michigan Order, 12 FCC Rcd at 20601-02, ¶ 110.

Interconnection Agreements. SWBT is legally obligated under its Texas PUC-approved interconnection agreements to furnish all checklist items on the requisite terms. If a CLEC did not initially seek a particular checklist item in its negotiations with SWBT, the CLEC may obtain the item from another Texas PUC-approved agreement. See, e.g., Texas 271 Agreement Attach. 26 (allowing opt-in to legitimately related provisions of other agreements, in accordance with the Local Competition Order, 11 FCC Rcd at 16139, ¶ 1315). Or, at its option, the CLEC may adopt the entirety of another Texas PUC-approved agreement. Auinbauh ¶ 35.

CLECs also may opt into the terms of the Texas 271 Agreement developed in the Texas PUC’s collaborative process. See Auinbauh Aff. Attach. A, Part 1 (Texas 271 Agreement). That agreement incorporates the results of the Texas PUC’s Mega-Arbitration as well as the commitments SWBT made during the collaborative process.⁴⁵ See Auinbauh Aff. ¶¶ 4-13. Through the Texas 271 Agreement, SWBT offers terms that exceed the requirements of the

⁴⁵ To provide carriers in Texas with additional certainty as they enter the local market, Southwestern Bell waived its rights to appeal Mega Arbitration decisions reflected in this standard agreement. Texas 271 Agreement § 18.2; see also Shelley Aff. ¶ 48.

1996 Act and FCC rules, but that the Texas PUC required as a prerequisite for its support of this section 271 application. Thirty-five CLECs already have chosen to take advantage of these offerings by adopting the Texas 271 Agreement. Should it receive interLATA relief from this Commission by April of 2000, SWBT has committed to extending the term of the Texas 271 Agreement by an additional three years. See Dec. 16, 1999 Open Meeting Tr. at 57-58 (statement of James Shelley).

The following sections (and the affidavits and other materials supporting them) discuss SWBT's contractual offerings and the associated network arrangements.

A. Checklist Item (i): Interconnection

In satisfaction of checklist item (i), SWBT provides interconnection "at any technically feasible point" within its network that is verifiably "at least equal in quality" to the interconnection SWBT provides itself, on rates, terms, and conditions that the Texas PUC has found to be "just, reasonable, and nondiscriminatory." 47 U.S.C. § 271(c)(2)(B)(i). CLECs in Texas thus have access to the most fundamental prerequisite of local exchange competition – the ability to send their customers' calls to, and receive calls from, customers of the incumbent carrier. CLECs are able to connect their networks to SWBT's by the most efficient means possible, including placement of the CLEC's own equipment in SWBT buildings. In fact, SWBT has provided CLECs 655 physical collocation spaces in 166 different SWBT central offices in Texas, and has done so well within the time intervals that this Commission has indicated are nondiscriminatory. Habeeb Aff. Attach. E; see Dysart Aff. ¶¶ 625-639.

To carry traffic between SWBT and CLEC locations, SWBT has provisioned nearly 348,000 interconnection trunks. Habeeb Aff. Attach. E. Each of these trunks typically serves about 3 facilities-based local access lines; if used to capacity, the existing trunks would be

capable of serving millions of facilities-based CLEC lines. Id. ¶¶ 27-28. To ensure nondiscrimination, SWBT provisions these trunks using the same equipment, interfaces, technical criteria, and service standards that are used for SWBT's own retail trunks. Deere Aff. ¶ 31. As further discussed below, these and other steps to facilitate interconnection between SWBT and CLECs fully satisfy the requirements of checklist item (i).

1. Methods of Interconnection

The Texas 271 Agreement and SWBT's interconnection agreements with other carriers establish five standard methods by which CLECs may connect their networks to SWBT's: mid-span fiber interconnection, physical collocation, virtual collocation, SONET-based interconnection, and leasing of SWBT facilities. Id. ¶ 14. Each of these interconnection arrangements is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. Id. ¶ 20.

Mid-span fiber interconnection is available at any mutually agreeable, economically and technically feasible point between a CLEC's premises and a SWBT tandem or end office. Id. ¶ 15. This arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via SWBT's tandem switch. Id. ¶ 16.

Physical collocation of CLEC equipment is available wherever space permits. Id. ¶¶ 5-6, 14, 22-25; see Auinbauh Aff. ¶ 72. CLECs in Texas currently are utilizing physical collocation for interconnection, as well as to combine UNEs obtained from SWBT with other network facilities. Deere Aff. ¶ 23; Auinbauh Aff. ¶ 5. SWBT allows collocation of equipment used and useful for interconnection or access to UNEs, regardless of whether such equipment offers other

functionalities, such as switching or enhanced services capabilities. Auinbauh Aff. ¶ 56. SWBT allows physical collocation of DSLAMs, including DSLAMs that integrate ATM switching, in SWBT central offices. Id. ¶ 56. Pursuant to the Commission's rules, see 47 C.F.R. § 51.323(h), SWBT permits CLECs to use collocated equipment to interconnect with other collocating carriers in the same central office. Auinbauh Aff. ¶ 53.

As discussed in Part II.C above, SWBT makes available caged, common, shared-cage, and cageless collocation, all at the option of the CLEC. See id. ¶¶ 54-63. Adjacent space collocation is available when all space for physical collocation is legitimately exhausted. Id. ¶ 54. SWBT also will make available any other physical collocation arrangement that has been deemed technically feasible on another incumbent LEC's premises, unless such an arrangement is not technically feasible on SWBT's premises or there is a lack of space. Id. ¶ 66.

Detailed terms for collocation are spelled out in SWBT's Texas PUC-approved physical collocation tariff (provided as Auinbauh Aff. Attach. D), as well as in SWBT's Interconnector's Collocation Services Handbook for Physical Collocation (provided as Auinbauh Aff. Attach. G), which is incorporated by reference into the collocation tariff. Auinbauh Aff. ¶ 57; see, e.g., Texas 271 Agreement Attachs. 13, 26.⁴⁶ All carriers that request collocation are provided copies of SWBT's Handbook, which addresses such details as equipment standards, insurance requirements, billing, and time intervals. Auinbauh Aff. ¶ 57.

⁴⁶ In an order issued on October 29, 1999, the Texas PUC ruled that all open issues regarding SWBT's physical and virtual collocation tariffs had been resolved, except for the inclusion of specific language set out in the PUC's order. See Auinbauh Aff. ¶ 40 & Attach. C; Shelley Aff. ¶¶ 44-46. SWBT included the language specified by the Texas PUC in its revised tariffs, which are effective pursuant to the PUC's order. See App. C, Tab 1925 ("Tariff Approval Order").

If SWBT must deny a CLEC's request for physical collocation because space is not available, SWBT will furnish detailed documentation of this denial to the CLEC. Id. ¶ 68. After reviewing SWBT's documentation and touring the structure, the CLEC may initiate an independent third-party review of space availability, with ultimate review and approval by the Texas PUC, if necessary. Id. ¶ 69. SWBT has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or expand their presence in the local market. See id. ¶ 73. SWBT also conserves collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment. See id. ¶ 62.

This Commission has specifically praised the Texas PUC's oversight of SWBT's collocation intervals. See First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, 4790-91, ¶¶ 54-55 (1999) ("Advanced Services First Report and Order"). Except where a CLEC places a large number of collocation orders in the same 5-business day period, SWBT responds to each request within 10 days with a notification whether space is available, and (if so) a price quotation. Auinhauh Aff. ¶¶ 44-45. Construction intervals likewise are short. In central office space with existing collocation infrastructure, for example, SWBT completes construction of caged physical collocation space within 90 days. Construction intervals are even less for cageless collocation arrangements. Id. ¶ 47-48. These intervals allow Texas CLECs to obtain collocation well within the time this Commission has suggested is reasonable. See UNE

Remand Order ¶ 269 (using six-month standard); Dysart Aff. ¶ 629 (average time of 65 days for SWBT to deliver quoted collocation arrangements).⁴⁷

The available monthly performance data from August through October 1999 show that SWBT routinely processes CLECs' requests for collocation within the applicable interval 100 percent of the time. Dysart Aff. ¶¶ 636-639 & Attach. B, Measurement 109. Data has been reported at a disaggregated level for the last four months, and SWBT likewise met its due dates for installation of collocation 100 percent of the time in all four Texas market areas. Id. ¶¶ 630-634 & Attach. B, Measurements 107 & 108. These measures have been disaggregated into 8 submeasures each, and have been reported at this level of detail for the last four months. For those performance measures with 10 or more data points, SWBT met the benchmark in each of the last four months. Id.

Security measures for collocators in SWBT's central offices reasonably protect SWBT's network and equipment from harm, and are no more stringent than those followed by SWBT's own personnel. See Auinbauh Aff. ¶¶ 74-78. CLECs have access to their collocated equipment 24 hours a day, 7 days a week, without a security escort, and with no need to use a separate entrance when the CLEC uses cageless collocation. Id. ¶ 78. CLEC personnel need not undergo any security training that is more stringent or intensive than the training undergone by SWBT personnel, nor are they required to obtain training from SWBT. Id. ¶ 75. SWBT treats information obtained from CLECs in the course of implementing security arrangements as

⁴⁷ This 90-day interval, based on calendar days, is even shorter than Bell Atlantic-New York's 76-day physical collocation interval, which is based on business days. Order Directing Tariff Revisions, Cases 99-C-0715 & 95-C-0657 (N.Y. PSC Aug. 31, 1999). The same holds true for SWBT's virtual collocation interval. See id.

confidential, and does not use that information for marketing or other competitive purposes. Id. ¶ 74; see Advanced Services First Report and Order, 14 FCC Rcd at 4788, ¶ 48.

SWBT makes detailed information regarding its collocation spaces and procedures available on the Internet. Auinbauh Aff. ¶ 57. For SWBT central offices where space for collocation has been legitimately exhausted, changes in space availability are posted on the Internet. Id. ¶ 70. SWBT also maintains a publicly available document on the Internet indicating those facilities, if any, that currently are full. Id. ¶ 70. SWBT updates this document within 10 days of the date a premises is determined to be out of physical collocation space. See id. ¶ 70 & Attach. I.

Virtual collocation is available to CLECs where space for physical collocation is legitimately exhausted, or at a CLEC's request (even where space for physical collocation is available) pursuant to SWBT's Texas PUC-approved state tariff, see Tariff Approval Order & Texas Virtual Collocation Tariff § 25, and SWBT's federal F.C.C. Tariff No. 73. See also Auinbauh Aff. ¶ 80; Deere Aff. ¶ 24. SWBT allows CLECs access to UNEs using virtual collocation, and permits CLECs using virtual collocation to connect with other CLECs that are collocated in SWBT's central offices. Auinbauh Aff. ¶ 53; Deere Aff. ¶ 24; Second Louisiana Order, 13 FCC Rcd at 20700-01, ¶ 163. SWBT will maintain and repair the equipment used in virtual collocation, although CLECs have the option of assuming this responsibility in certain circumstances. Auinbauh Aff. ¶ 82. Notification and installation intervals for all tariffed equipment are established in SWBT's Interconnector's Collocation Services Handbook for Virtual Collocation. Id. ¶ 51. SWBT has completed 40 virtual collocation arrangements in Texas. Habeeb Aff. Attach. E. SWBT did not miss a virtual collocation due date in any of the

four months for which data are available. Dysart Aff. ¶ 635 & Attach. B. Measurements 108-7 & 108-8.

Special Request Process. In addition to these standard offerings, CLECs may request custom-tailored interconnection arrangements through a Special Request process. Deere Aff. ¶¶ 28, 80-84; Auinbauh Aff. ¶ 66. This process, which is also known as the “Bona Fide Request” process, allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. See, e.g., Texas 271 Agreement Attach. 6, § 2.22. SWBT will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days. Deere Aff. ¶¶ 9, 82. If the request is technically feasible and the CLEC authorizes further development, SWBT will negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from SWBT’s receipt of the request). Id. If the CLEC’s request is not technically feasible, SWBT notifies the CLEC of that fact within 30 days of the request. Id. ¶ 56. The CLEC may arbitrate feasibility issues before the Texas PUC. See also Texas 271 Agreement Attach. 6, § 2.22.10.

2. *Interconnection Trunking*

SWBT has demonstrated its ability to supply interconnection trunks by furnishing nearly 348,000 one- and two-way trunks for CLECs in Texas. Habeeb Aff. Attach. E. The Affidavit of William C. Deere discusses interconnection trunking arrangements from a CLEC to SWBT (for traffic originated by the CLEC), and from SWBT to a CLEC (for traffic terminated over the CLEC’s network). Deere Aff. ¶¶ 32-41. Forecasting and servicing of interconnection trunk groups are based upon the same industry-standard objectives that SWBT uses for its own trunk groups, or even stricter standards. Id. ¶ 42; see also Dysart Aff. ¶¶ 543-547. SWBT also uses

standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as trunking for SWBT's own local services. Deere Aff. ¶ 49. In order to ensure equality, SWBT interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own retail operations. Id. ¶ 31.

SWBT conducts extensive performance monitoring of its interconnection trunking arrangements. Relevant measures track average installation intervals, missed due dates, the length of delays, trunk blockage, and trunk restoration intervals. See Dysart Aff. ¶ 548 & Attach. B, Measurements 70-78. Across Texas, SWBT has bettered the parity levels and benchmarks for all measurements for most of the months for which results are available, thus demonstrating nondiscriminatory service. See id. ¶¶ 549-570 & Attach. B, Measurements 70-78. Where the data have indicated performance issues (such as in South Texas last Spring and recently in Houston), SWBT has investigated and added the necessary extra capacity or otherwise resolved the technical difficulties or performance calculation issues that have been discovered. See id. ¶¶ 549-559; see generally Second Louisiana Order, 13 FCC Rcd at 20638, ¶ 57 (addressing problems shows checklist compliance; perfection not required).

The Texas PUC specifically reviewed SWBT's performance data, as well as SWBT's trunk forecasting, ordering, and provisioning processes, during its supplemental proceedings in November and December 1999. At the conclusion of that extra review and after recommending numerous improvements (which SWBT promptly implemented) and performance reporting changes, the Texas Commission confirmed its prior conclusion that SWBT meets the checklist requirements in this area. See Shelley Aff. ¶¶ 49-51; Dysart Aff. ¶¶ 54-58; Dec. 16, 1999 Open Meeting Tr. at 22-28; see also Affidavit of William C. Deere, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project

No. 16251 (Tex. PUC filed Dec. 14, 1999) (“Deere Tex. PUC Aff.”) (App. C, Tab 2007); Deere Aff. ¶¶ 42-48. SWBT also has agreed to discuss further improvements to its processes with CLECs in the upcoming Texas PUC-sponsored trunking forum, scheduled for January 2000. See Deere Tex. PUC Aff. ¶ 15; Dec. 16, 1999 Open Meeting Tr. at 23-28.

3. *Pricing*

SWBT provides interconnection at geographically deaveraged prices that are consistent with 47 U.S.C. § 252(d) and this Commission’s rules. In its Mega-Arbitration proceeding, the Texas PUC set out a comprehensive rate sheet for interconnection, UNEs, and reciprocal compensation, based on the TELRIC methodology and cost studies generated under the detailed supervision of the Texas PUC staff. Auinbauh Aff. ¶ 139; Smith Aff. ¶¶ 7-51 (App. A, Part A-3, Tab 4); see Arbitration Award App. B, at 4 (App. F, Tab 17). The Texas PUC found that its TELRIC rates satisfy the requirements of section 252(c), which incorporate the pricing standard of section 252(d). Auinbauh Aff. ¶¶ 135-140; Arbitration Award at 4. The arbitrated rates have been incorporated into SWBT’s interconnection agreements, including the Texas 271 Agreement. See, e.g., Texas 271 Agreement Attach. 6, App. Pricing - UNE; SWBT/AT&T Agreement Attach. 6, App. Pricing - UNE.

Physical collocation is priced at tariffed rates. Auinbauh Aff. ¶¶ 148-149. Where a CLEC requests custom work for which no rate has been established, TELRIC-based charges apply. Id. Site preparation charges are pro-rated and allocated based on the percentage of the total space used by each CLEC. Id. ¶¶ 41, 44, 59-60, 63. SWBT also pro-rates collocation charges so that the first CLEC in a premises is not responsible for the entire cost of site preparation. Id.